Volume 23 | Number 18 Article 2

9-7-2012

Cases, Regulations and Statutes

Robert P. Achenbach Jr
Iowa State University

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

GENERAL

ADMINISTRATIVE EXPENSES. The debtor initially filed for Chapter 12 and during that case a creditor delivered dairy cattle feed to the debtor which was not paid when the case was converted to Chapter 7. The creditor sought to have the amounts owed for the feed to be classified as administrative expenses in the Chapter 7 case. The trustee objected to the classification because the transactions were not within the ordinary course of business because the debtor failed to pay for the feed as often as was done prior to the bankruptcy filing and the amount of credit was excessive. The credit provided testimony that the over $500,000 in credit was within industry standards. The court noted that Section 364(a) allows debtors in possession to obtain unsecured credit in the ordinary course of business if eligible for administrative expenses. The court also found that administrative expense classification was allowed for expenses incurred during bankruptcy which were necessary for the preservation of the estate. The court held that an evidentiary hearing was required to show (1) the feed transactions and grant of credit were similar to the past dealings of the parties and (2) the feed transactions were within the ordinary dealings of other dairies in the are. ***In re* Azevedo, 2012 Bankr. LEXIS 3951 (Bankr. D. Idaho 2012)**.

CHAPTER 12

ELIGIBILITY. The debtors, husband and wife, filed for Chapter 12 and a creditor challenged the debtors' eligibility for Chapter 12. The husband owned and operated a sole proprietorship to breed, raise and sell horses. The wife owned an S corporation which operated a marketing and consulting business. In the tax year prior to filing for bankruptcy, the couple had total income of $210,718, with $119,112 from the husband's business and $91,606 from the wife's business. The trustee claimed that the separate business amounts were erroneous because the husband's income included a management fee paid by the wife's business to the husband's business. Without the management fee income, the husband's farm income was less than half of the couple's total income. The issue was whether the gross income of the wife's S corporation was to be included in the debtors' total income or whether only the amount paid to the wife was included. The court held that, because the S corporation provided services performed by the wife, the gross income of the corporation was included in the wife's income; therefore, the debtors were not eligible for Chapter 12 because the income from the horse operation was less than half of the total income of the couples' businesses. ***In re* DeGour, 2012 Bankr. LEXIS 3884 (Bankr. C.D. Calif. 2012)**.

FEDERAL FARM PROGRAMS

CROP INSURANCE. The FCIC has adopted as final regulations amending the common crop insurance regulations, peach crop insurance provisions. The final regulations provide policy changes, clarify existing policy provisions to better meet the needs of insured producers, and reduce vulnerability to program fraud, waste, and abuse. The changes will apply for the 2013 and succeeding crop years. **77 Fed. Reg. 52587 (Aug. 30, 2012)**.

LIVESTOCK MANDATORY REPORTING PROGRAM. The AMS has adopted as final regulations which require packers to report wholesale pork sales to AMS. The rule outlines what information packers will be required to submit to AMS, how the information should be submitted, and other program requirements. Packers will submit the price of each sale, quantity, and other characteristics (e.g., type of sale, item description, destination) that AMS will use to produce timely, meaningful market reports. **77 Fed. Reg. 50561 (Aug. 22, 2012)**.

FEDERAL ESTATE AND GIFT TAXATION

FORMS. The IRS has published a draft of Form 706, *U.S. Estate (and Generation-Skipping Transfer) Tax Return* (Rev. August 2012). Significant changes reflected in the draft Form 706 include incorporating the portability provisions of I.R.C. § 2010(c) and the addition of Schedule PC, *Protective Claim for Refund*. The IRS is accepting comments on the draft Form 706, which may be submitted on the IRS website (www.irs.gov) on the page titled "Comment on Forms and Publications" or by e-mailing taxforms@irs.gov (include "Form 706" in the subject line).

FEDERAL INCOME TAXATION

ALIMONY. In 2004, the taxpayer separated from a former spouse and the parties orally agreed that the taxpayer would pay the spouse monthly payments of $2,605 for living expenses. The parties did not determine what part of the payment was spouse support and which part was child support and the agreement was never written. The couple formally divorced in December 2008 and the divorce decree provided for $1400 a month in alimony payments. Under advice of a tax accountant, the taxpayer claimed all 2008 payments of $2,605 and the $1400 divorce settlement payment as deductible alimony. The court held that, under I.R.C. § 71(b) and Treas. Reg. § 1.71-1(c). The payments made before the divorce proceedings were not eligible for deduction as alimony because none of the payments were made under a written separation agreement. The court also held that the taxpayer was not liable for the accuracy-related penalty on the underpayment of tax because the taxpayer selected a competent tax professional to prepare the tax return, provided the tax professional with full facts and relied on the tax professional in good faith. **Larievy v. Comm'r, T.C. Memo. 2012-247**.

BASIS IN REAL PROPERTY. The taxpayer purchased two residential rental properties and sold them several years later. The taxpayer claimed an increased basis in both properties based on improvements made to each. However, the taxpayer failed to produce any written substantiation of the cost of the improvements; therefore, the court held that the taxpayer's bases in the properties could not be increased above the amount allowed by the IRS. The court also upheld assessment of an accuracy-related penalty because the taxpayer failed to keep adequate records to support the bases increases. The court held that the reasonable cause exception did not apply because the taxpayer did not show that the return preparer was a competent professional with sufficient expertise and that the taxpayer had provided necessary and accurate information to the preparer, again because of the lack of adequate records. **Diaz v. Comm'r, T.C. Memo. 2012-214**.

CASUALTY LOSS. The taxpayers suffered the loss of their residence by a fire. Although the taxpayers had property insurance on the residence, the insurance company denied coverage for several reasons, but primarily for failure to promptly submit proof of loss. The evidence showed that the loss was originally promptly filed but the taxpayers did not comply with further documentation required by the insurance company. The taxpayers brought suit against the insurance company for breach of contract but lost. The taxpayers claimed the entire loss as a casualty loss deduction but the deduction was denied by the IRS because the taxpayers failed to file the required proof of claim. The taxpayers argued that they were only required to file the initial claim of loss. The court agreed with the taxpayers, holding that I.R.C. § 165 requires only the existence of insurance and a filing of a claim for insurance, both of which the taxpayers proved. **Ambrose v. United States, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,518 (Fed. Cls. 2012)**.

CHARITABLE DEDUCTION. The taxpayer purchased 457 acres of rural land along a river and granted easements to the state over four acres. The taxpayer planned to develop rural residential tracts on 66 acres and granted a conservation easement on the remaining 384 acres. The court held that the value of the conservation easement should be determined by subtracting the value of remaining development parcel from the value of the entire property with the development parcel included. The appellate court affirmed in a decision designated as not for publication. **Trout Ranch, LLC v. Comm'r, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,524 (10th Cir. 2012), *aff'g*, T.C. Memo. 2010-283**.

DEPENDANTS. The taxpayer's sister had two children who lived with the sister until at least the middle of July 2009, although the only written documentation presented was a custody order which placed the children with the taxpayer in September of 2009. The taxpayer claimed dependent deductions for both children for 2009 but the deductions were disallowed by the IRS. Although the court held that the children were qualified children of the taxpayer as their aunt, the court held that the taxpayer failed to show that the children lived with the taxpayer for more than one half of 2009; therefore, the children were not qualified children, under I.R.C. § 152(c), and no dependent deduction was allowed. The children were also not qualified relatives because the taxpayer failed to show that the taxpayer paid for more than half of the children's support during 2009. **Watley v. Comm'r, T.C. Memo. 2012-240**.

DISASTER LOSSES. On July 31, 2012, the President determined that certain areas in the District of Columbia are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of severe storms which began on June 29, 2012. **FEMA-4073-DR**. On August 2, 2012, the President determined that certain areas in Montana are eligible for assistance from the government under the Act as a result of wildfire which began on June 25, 2012. **FEMA-4074-DR**. On August 2, 2012, the President determined that certain areas in Maryland are eligible for assistance from the government under the Act as a result of severe storms and straight-line winds which began on June 29, 2012. **FEMA-4075-DR**. On August 2, 2012, the President determined that certain areas in Wisconsin are eligible for assistance from the government under the Act as a result of severe storms and flooding which began on June 19, 2012. **FEMA-4076-DR**. Accordingly, taxpayers in the areas may deduct the losses on their 2011 federal income tax returns. See I.R.C. § 165(i).

EXPENSE METHOD DEPRECIATION. The taxpayer operated a vineyard business activity. In 2005, the taxpayers began planting the vineyard and the costs of the land preparation, labor, rootstock, and the planting were capitalized over three years. The land preparation costs claimed did not include any nondepreciable land costs. In 2009, when the plants became viable, the taxpayers placed the vineyard in service and took a deduction under I.R.C. § 179 for the costs incurred in planting the vineyard. In a Chief Counsel Advice letter, the IRS discussed the depreciable character of the vineyard. The IRS noted that *Rev. Rul. 67-51, 1967-1 C.B. 68* concluded that certain fruit bearing trees are not I.R.C. § 179 property because they do not qualify as tangible personal property within the meaning of I.R.C. § 179 (1954 Code). When *Rev. Rul. 67-51* was issued, I.R.C. § 179(d)(1) of the 1954 Code provided that the term "§ 179 property" meant tangible personal property of a character subject to the allowance for depreciation under I.R.C. § 167, acquired by purchase after December 31, 1957, for use in a trade or business or for holding for production of income, and with a useful life (determined at the time of such acquisition) of six years or more. The regulations under I.R.C. § 179 of the 1954 Code (former Treas. Reg. § 1.179-3(b)) provided that for purposes of I.R.C. § 179 of the 1954 Code, the term "tangible personal property" included any tangible property except land, and improvements thereto, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). Since the issuance of *Rev. Rul. 67-51*, the definition of § 179 property has significantly changed. For 2009 and currently, § 179 property includes depreciable property that is tangible personal property or other tangible property under I.R.C. § 1245(a)(3). Because of the change in the definition of § 179 property, *Rev. Rul. 67-51* no longer applies for purposes of I.R.C. § 179 of the 1986 Code. Therefore, under current law, I.R.C. § 179(d)(1), the IRS ruled that the vineyard was eligible § 179 property. **CCA 201234024, May 9, 2012**.

FIRST TIME HOMEBUYER CREDIT. In February 2007, the taxpayer signed a real estate contract with the sellers of a residence for the purchase of that residence. The contract provided for installment payments of the purchase price and the taxpayer moved into the home on the date the contract was signed. In 2008, the taxpayer obtained a loan and used the proceeds to pay off the real estate contract. The taxpayer claimed deductions for mortgage interest and property taxes paid on the residence on the taxpayer's 2007 return. The taxpayer's 2008 return also claimed deductions for mortgage interest and property taxes but also claimed the first time homebuyer's credit. The court held that the first time homebuyer's credit applied only to purchases made after April 9, 2008; therefore, the taxpayer was not entitled to the credit because the residence was purchased in 2007. The court held that the determination of transfer of ownership was made under state, in this case Iowa, law. The court held that, under Iowa law a real estate contract conveyed sufficient title to make the purchase occur when executed in 2007, not when the contract was completed in 2008. **Funk v. Comm'r, T.C. Summary Op. 2012-82**.

GAMBLING LOSSES AND INCOME. The IRS has published five important tips about gambling and taxes: (1) gambling income includes, but is not limited to, winnings from lotteries, raffles, horse races, and casinos. It includes cash winnings and the fair market value of prizes such as cars and trips. (2) If the taxpayer receives a certain amount of gambling winnings or if the taxpayer has any winnings that are subject to federal tax withholding, the payer is required to issue the taxpayer a Form W-2G, *Certain Gambling Winnings*. The payer must give the taxpayer a W-2G if the taxpayer receives: (a) $1,200 or more in gambling winnings from bingo or slot machines; (b) $1,500 or more in proceeds (the amount of winnings minus the amount of the wager) from keno; (c) more than $5,000 in winnings (reduced by the wager or buy-in) from a poker tournament; (d) $600 or more in gambling winnings (except winnings from bingo, keno, slot machines, and poker tournaments) and the payout is at least 300 times the amount of the wager; or (e) any other gambling winnings subject to federal income tax withholding. (3) Generally, taxpayers report all gambling winnings on the "Other income" line of Form 1040, *U.S. Federal Income Tax Return*. (4) Taxpayers can claim gambling losses up to the amount of winnings on Schedule A, *Itemized Deductions*, under 'Other Miscellaneous Deductions.' Taxpayers must report the full amount of winnings as income and claim allowable losses separately. Taxpayers cannot reduce gambling winnings by gambling losses and report only the difference as income. A taxpayer's records should also show the winnings separately from losses. (5) If a taxpayer is going to claim gambling losses, the taxpayer must have receipts, tickets, statements and documentation such as a diary or similar record of losses and winnings. Refer to IRS Publication 529, *Miscellaneous Deductions*, for more details about the type of information taxpayers should write in a diary and what kinds of proof the taxpayer should retain in the records. For more information on gambling income and losses, see IRS Publication 525, *Taxable and Nontaxable Income*. **IRS Summertime Tax Tip 2012-24**.

HIGHWAY USE TAX. The IRS has published information reminding truckers and other owners of heavy highway vehicles that in most cases, their next federal highway use tax return is due on Aug. 31, 2012. The deadline generally applies to Form 2290 and the accompanying tax payment for the tax year that begins on July 1, 2012, and ends on June 30, 2013. Returns must be filed and tax payments made by Aug. 31 for vehicles used on the road during July. For vehicles first used after July, the deadline is the last day of the month following the month of first use. This means that the temporary Nov. 30 deadline that generally applied in 2011 will not apply this year. The highway use tax applies to highway motor vehicles with a taxable gross weight of 55,000 pounds or more, which generally includes trucks, truck tractors, and buses. Ordinarily, vans, pick-ups, and panel trucks are not taxable because they fall below the 55,000-pound threshold. The tax of up to $550 per vehicle is based on weight, and a variety of special rules apply, which are explained in the instructions to Form 2290. Though some taxpayers have the option of filing Form 2290 on paper, the IRS encourages all taxpayers to take advantage of the speed and convenience of filing this form electronically and paying any tax due electronically. Taxpayers reporting 25 or more vehicles must e-file. A list of IRS-approved software providers can be found on IRS.gov. Due to IRS facility maintenance taking place over the Labor Day weekend (from 1 p.m. on Aug. 31 to noon on Sept. 4), the IRS asks taxpayers to e-file Form 2290 before 1 p.m. Eastern time on Friday, Aug. 31. For those who miss the 1 p.m. cutoff, formal guidance announcing an extension to e-file Form 2290 by Sept. 7 will be issued soon. The deadline for filing paper returns is unaffected and those returns must, as usual, be mailed and postmarked by midnight on Aug. 31. For more information on the federal highway use tax, visit www.irs.gov/truckers **IR-2012-69**.

HOME OFFICE. Taxpayers, husband and wife, operated an accounting and real estate business from their residence. The taxpayers claimed all of the expenses associated with the home as home office deductions, even though only 16 percent of the residence was used exclusively for their businesses. The court pointed to evidence produced by the IRS that all other areas of the home were used only part time for business activities at best. The court upheld the IRS allowance of only 16 percent of the residence-related expenses, including depreciation, as deductible business expenses. **Kerstetter v. Comm'r, T.C. Memo. 2012-239**.

LETTER FORWARDING SERVICE. Under Policy Statement P-1-187, the IRS established a program whereby the IRS will forward a letter to a missing individual on behalf of a private individual or government agency if this action is for a humane purpose and there is no other way to relay the information to the individual. *Revenue Procedure 94-22, 1994-1 C.B. 608,* provided that the IRS will forward letters on behalf of an individual, company or organization that controls assets that may be due a taxpayer, including plan administrators, sponsors of qualified retirement plans, or qualified termination administrators of abandoned plans under the Department of Labor's Abandoned Plan Program who are attempting to locate missing plan participants. After the release of this revenue procedure, several alternative missing person locator resources, including the internet, have become available; therefore, the IRS will no longer consider locating a missing taxpayer who may be entitled to a retirement plan payment or other financial benefit from an individual, company or organization to be a humane purpose for which the service will provide letter-forwarding services. **Rev. Proc. 2012-35, I.R.B. 2012-__**.

LIFE INSURANCE. The taxpayer purchased a whole life insurance policy on the taxpayer's life in 1975. The policy had an automatic premium payment provision that automatically borrowed the amount of any premium which was not timely paid so long as the policy had case value in excess of the premium due. The policy also provided that any premium not paid during a grace period caused the termination of the policy, requiring the taxpayer to take certain steps to reinstate the policy. The taxpayer made 18 premium payments and then stopped, believing that the failure to make the payments would cause the policy to terminate. However, the company used the automatic premium payment provision to create loans against the policy until 2008 when the cash value of the policy no longer exceeded the premiums owed. The IRS argued that the taxpayer received a constructive receipt of the loan amount when the policy was cancelled in 2008. The court placed the burden of proof on the IRS because the taxpayer provided proof that the policy should have terminated when the taxpayer stopped making premium payments. Because the IRS failed to show that the taxpayer made any affirmative attempts to reinstate the policy, the court held that the policy terminated prior to 2008 when several of the premium loans occurred after the grace period, resulting, under the terms of the contract in the termination of the policy. Therefore, the court held that the taxpayer did not receive any income in 2008 because the policy terminated prior to that year. **Moore v. Comm'r, T.C. Summary Op. 2012-83**.

LIMITED LIABILITY COMPANY. The taxpayer was formed as a limited liability company and had no assets, income, deductions, or liabilities, and was completely dormant until the taxpayer was merged into another corporation. At that time, the taxpayer elected to be classified as an association taxable as a corporation, by filing a Form 8832, *Entity Classification Election*. Treas. Reg. § 301.7701-3(c)(1)(iv) provides that, if an eligible entity makes an election under Treas. Reg. § 301.7701-3(c)(1)(i) to change its classification (other than an election made by an existing entity to change its classification as of the effective date of this section), the entity cannot change its classification by election again during the sixty months succeeding the effective date of the election. However, the Commissioner may permit the entity to change its classification by election within the sixty months if more than fifty percent of the ownership interests in the entity as of the effective date of the subsequent election are owned by persons that did not own any interests in the entity on the filing date or on the effective date of the entity's prior election. The IRS ruled that the taxpayer's filing of Form 8832 after the merger was an initial classification election and not a change in classification for purposes of Treas. Reg. 301.7701-3(c)(1)(iv). **Ltr. Rul. 201233007, May 14, 2012**.

LOAN VERSUS SALE. The taxpayer pledged stock for a loan under which the lender had the right to, and in fact did, sell the stock in order to determine the loan amount equal to 90 percent of the stock value. After the loan, the taxpayer had no right to the stock dividend and had the right at the end of the loan term, to repurchase the stock at the current price, repay the loan and interest or surrender all rights to the stock. The taxpayer chose to surrender the stock which had decreased in value far below the loan principal and interest. The court held that the loan was taxed as a sale of the stock because the title to the stock passed to the lender, as evidenced by the lender's sale of the stock before determination of the amount of the loan. Note: the transaction, if valid for tax purposes, would have allowed the taxpayer to realize all the gain in the stock without recognition of tax liability. The appellate court affirmed. **Calloway v. Comm'r, 2012-2 U.S. Tax Cas. (CCH) ¶ 50,533 (11th Cir. 2012), *aff'g*, 135 T.C. 26 (2010)**.

QUARTERLY INTEREST RATE. The IRS has announced that, for the period July 1, 2012 through September 30, 2012, the interest rate paid on tax overpayments remains at 3 percent (2 percent in the case of a corporation) and for underpayments remains at 3 percent. The interest rate for underpayments by large corporations remains at 5 percent. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 remains at 0.5 percent. **Rev. Rul. 2012-23, I.R.B. 2012-39.**

S CORPORATIONS

SECOND CLASS OF STOCK. The taxpayer was a corporation which elected to be treated as an S corporation. The taxpayer had two equal shareholders and the taxpayer made disproportionate distributions to the shareholders during the course of its operations. The taxpayer represented that each share of the taxpayer has identical rights to liquidation proceeds and distributions and that no provision exists in the governing documents, regulations, by-laws or any agreement between the shareholders that vary these rights. The taxpayer represented that it will take remedial steps to correct the disproportionate distribution that will result in distributions proportionate to the two shareholders' respective interests in the taxpayer since its inception as an S corporation. The taxpayer and its shareholders have agreed to make any adjustments the Commissioner may require consistent with the treatment of the taxpayer as an S corporation. The IRS ruled that the disproportionate distributions did not create a second class of stock so long as the taxpayer makes corrective distributions so that distributions will be proportionate to the shareholders' interests. **Ltr. Rul. 201234001, May 7, 2012**.

SUBSIDIARY. The taxpayer was an S corporation which owned all the stock of another corporation which it intended to treat as a qualified subchapter S subsidiary. However, the taxpayer failed to file Form 8869, *Qualified Subchapter S Subsidiary Election,* for the subsidiary. Although several years had passed, the taxpayer always filed returns as if the subsidiary was a qualified subchapter S subsidiary. The IRS granted the taxpayer an extension of time to file the form. **Ltr. Rul. 201233003, April 6, 2012**.

TRUSTS. On the death of a shareholder, the decedent's shares in the taxpayer S corporation passed to a trust. The trust terms provided that the trust could elect to be a qualified subschapter S trust but the terms also provided that the beneficiary had the power to appoint the income from the trust to someone other than the beneficiary. The taxpayer and trust obtained a state court order modifying the trust to remove the beneficiary's power to appoint the income from the trust to someone other than the beneficiary. The IRS ruled that the trust, as amended, was a qualified subchapter S trust if the proper election is filed. **Ltr. Rul. 201233014, May 16, 2012**.

SAFE HARBOR INTEREST RATES
September 2012

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	0.21	0.21	0.21	0.21
110 percent AFR	0.23	0.23	0.23	0.23
120 percent AFR	0.25	0.25	0.25	0.25
		Mid-term		
AFR	0.84	0.84	0.84	0.84
110 percent AFR	0.92	0.92	0.92	0.92
120 percent AFR	1.01	1.01	1.01	1.01
		Long-term		
AFR	2.18	2.17	2.16	2.16
110 percent AFR	2.40	2.39	2.38	2.38
120 percent AFR	2.62	2.60	2.59	2.59

Rev. Rul. 2012-24, I.R.B. 2012-36.

SOCIAL SECURITY BENEFITS. In one tax year, the taxpayer received a total of $11,947.20 in social security disability payments, of which $5,844 was paid to the taxpayer; $1,388.40 was deducted for Medicare Part B premiums; and $4,714.80 was offset for workers' compensation payments received from a state. The taxpayer included only the payments received as taxable income but the IRS assessed a deficiency based on including the entire amount in income. The taxpayer argued that the offset for workers' compensation should not be included in income, but the court held that I.R.C. § 86 (c)(3) specifically includes disability payments offset by workers' compensation benefits; therefore, the entire $11,947.20 payments were includible in income, of which 85 percent was taxable.

LABOR

AGRICULTURAL WORKER. The defendant challenged an order by the Minnesota Department of Labor requiring the defendant to pay overtime for workers on the defendant's farm. Although the state recognized that the workers were agricultural employees, the state argued that, because the workers were paid on an hourly basis, the defendant was not entitled to an exemption from the overtime rules for agricultural employees. The court held that state regulations under the Minnesota Fair Labor Standards Act, Minn. Stat. §§ 177.1 *et seq*, provided that the agricultural employee exemption applied only to salaried employees, defined as employees guaranteed a set wage on at least a weekly basis. The defendant argued that the federal Fair Labor Standards Act preempted the state law, but the court held that the federal law provided that state law controlled if the state law was more restrictive than the federal law, as it was in this case. Note: The federal FLSA has no salary provision for the agricultural employment exemption. Therefore, the court held that the defendant's agricultural employees paid on an hourly basis were not eligible for the agricultural employee exemption from the overtime wage rules. **In the Matter of the Order to Comply: Labor Law Violation of Daley Farm of Lewiston, 816 N.W.2d 671, 2012 Minn. App. LEXIS 65 (Minn. Ct. App. 2012)**.

NUISANCE

RIGHT-TO-FARM. The plaintiff filed suit to prevent enforcement of the defendant township's zoning ordinance which prevented the plaintiff from having horses on property of less than one and one half acres. The plaintiff argued that zoning ordinance violated the Michigan right-to-farm statute, Mich. Code § 2.116(C)(10). The court acknowledged that the statute prohibited the zoning ordinance if a commercial farm operation conformed to generally accepted agricultural and management practices. However, the court held that the statute did not apply in this case because the plaintiff did not show that the plaintiff operated a commercial farming operation on the property. The ruling is designated as not for publication. **Brown v. Summerfield Township, 2012 Mich. App. LEXIS 1664 (Mich. Ct. App. 2012)**.

IN THE NEWS

IRS ONLINE. The IRS is replacing and upgrading a computing center electrical plant over the Labor Day weekend. Some systems, including the online payment agreement application and online applications for Employer Identification Numbers, will shut down beginning approximately 1:00 a.m. eastern time on Thursday, Aug. 30 until approximately noon eastern time Tuesday, Sept. 4.

AGRICULTURAL TAX SEMINARS

by Neil E. Harl

Join us for expert and practical seminars on the essential aspects of agricultural tax law. Gain insight and understanding from one of the country's foremost authorities on agricultural tax law.

The seminars will be held on two days from 8:00 am to 5:00 pm. Registrants may attend one or both days, with separate pricing for each combination. On the first day, Dr. Harl will speak about farm and ranch income tax. On the second day, Dr. Harl will cover farm and ranch estate and business planning. Your registration fee includes written comprehensive annotated seminar materials for the days attended and lunch. **Online registration is available at www.agrilawpress.com.**

Two locations and dates to chose from:

September 17-18, 2012, Fargo, ND **Holiday Inn, 3803 13th Ave. South, Fargo, ND 58103 ph. 701-282-2700**

September 20-21, 2012, Sioux Falls, SD **Ramada Hotel, 1301 W. Russell St., Sioux Falls, SD 57104 ph. 605-336-1020**

The topics include:

First day

FARM INCOME TAX

New Legislation

Reporting Farm Income
- Leasing land to family entity
- Constructive receipt of income
- Deferred payment and installment payment arrangements for grain and livestock sales
- Using escrow accounts
- Payments from contract production
- Items purchased for resale
- Items raised for sale
- Crop insurance proceeds
- Weather-related livestock sales
- Sales of diseased livestock
- Reporting federal disaster assistance benefits
- Gains and losses from commodity futures

Claiming Farm Deductions
- Soil and water conservation expenditures
- Fertilizer deduction election
- Depreciating farm tile lines
- Farm lease deductions
- Prepaid expenses
- Preproductive period expense provisions
- Regular depreciation, expense method depreciation, bonus depreciation
- Paying rental to a spouse
- Paying wages in kind
- Section 105 plans

Sale of Property
- Income in respect of decedent
- Sale of farm residence
- Installment sale including related party rules
- Private annuity
- Self-canceling installment notes
- Sale and gift combined.

Like-Kind Exchanges
- Requirements for like-kind exchanges
- "Reverse Starker" exchanges
- What is "like-kind" for realty
- Like-kind guidelines for personal property
- Partitioning property
- Exchanging partnership assets

Taxation of Debt
- Turnover of property to creditors
- Discharge of indebtedness
- Taxation in bankruptcy.

Second day

FARM ESTATE AND BUSINESS PLANNING

New Legislation

Succession planning and the importance of fairness

The Liquidity Problem

Property Held in Co-ownership
- Federal estate tax treatment of joint tenancy
- Severing joint tenancies and resulting basis
- Joint tenancy and probate avoidance
- Joint tenancy ownership of personal property
- Other problems of property ownership

Federal Estate Tax
- The gross estate
- Special Use Valuation
- Family-owned business deduction recapture
- Property included in the gross estate
- Traps in use of successive life estates
- Basis calculations under uniform basis rules
- Valuing growing crops
- Claiming deductions from the gross estate
- Marital and charitable deductions
- Taxable estate
- The applicable exclusion amount
- Unified estate and gift tax rates
- Portability and the new regulations
- Federal estate tax liens
- Undervaluations of property

Gifts
- Reunification of gift tax and estate tax
- Gifts of property when debt exceeds basis
- Major gifts in 2012 and the possibility of "claw-back"

Use of the Trust

The General Partnership
- Small partnership exception

Limited Partnerships

Limited Liability Companies
- Developments with passive losses
- Corporate-to-LLC conversions
- New regulations for LLC and LLP losses

The Closely Held Corporations
- State anti-corporate farming restrictions
- Developing the capitalization structure
- Tax-free exchanges
- Would incorporation trigger a gift because of severance of land held in joint tenancy?
- "Section 1244" stock

Status of the Corporation as a Farmer
- The regular method of income taxation
- The Subchapter S method of taxation

Financing, Estate Planning Aspects and Dissolution of Corporations
- Corporate stock as a major estate asset
- Valuation discounts
- Dissolution and liquidation
- Reorganization

Social Security
- In-kind wages paid to agricultural labor

The seminar registration fees for *current subscribers* (and for each one of multiple registrations from the same firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, and *Farm Estate and Business Planning* are $225 (one day) and $400 (two days).

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